
(2016) 05 KL CK 0004

In the High Court Of Kerala

Case No : Ins. Appeal No. 43 of 2010 (Against the Judgment In IC 39 of 2007 of Employees Insurance Court, Alappuzha Dated 20.11.2009)

Regional Director E.S.I. Corporation

APPELLANT

Vs

Uno Security Services

RESPONDENT

Date of Decision : 17-05-2016

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22)

Citation : (2017) 1 CLR 552 : (2017) 152 FLR 84 : (2016) 3 KerLJ 269 : (2016) 3 KLT 83 : (2017) LabLR 105 : (2016) LIC 3380 : (2016) 4 LLJ 471 : (2017) 1 LLN 439

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Mr. Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. Sandesh Raja K., Advocate, for the Appellant; Sri. A.V. Xavier and Sri. K. Jolly John, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. This appeal arises out of the judgment of the Employees Insurance Court, Alappuzha in I.C. No. 39/2007, an application filed by the respondent herein under Section 75 read with Section 77 of the Employees State Insurance Act, 1948 (hereinafter referred to as "the Act"), seeking for a declaration that Ext.P5 order dated 11.5.2007 of the appellant assessing and demanding Rs. 1,71,482/- under Section 45A of the Act towards contribution on omitted wages, relating to the period from 1.7.2000 to 30.6.2006 is unsustainable.

2. By judgment dated 20.11.2009, the court below held that the respondent is not liable to pay Rs. 13,923/- towards contribution on difference in salary as per ledger and challan for the year 2000-01; Rs. 10,490/-, Rs. 20,535/- and Rs. 19,043/- towards contribution on uniform allowance; Rs. 18,234/- towards contribution on utility allowance; Rs. 46,854/- towards contribution on travelling and utility allowance; and Rs. 38,766/- towards other allowances. The claim made on other heads were declined holding that the respondent is liable to pay

Rs. 260/- towards short payment; Rs. 202/-, Rs. 868/- and Rs. 2365/- towards contribution on wages paid to casual labourers; and Rs. 202/- towards contribution on office cleaning charges.

3. Aggrieved by the judgment of the court below dated 20.11.2009, the appellant is before this Court in this appeal under Section 82 of the Act.

4. Heard the learned Standing Counsel for the Employees State Insurance Corporation, representing the appellant and also the learned counsel for the respondent establishment.

5. The pleadings and materials on record would show that the respondent is an establishment covered under the Act, assigned with Code No. 54-12300-01. On 10.8.2006, 11.8.2006 and 14.8.2006, the Inspector attached to the appellant Corporation inspected the establishment in question and verified the General Ledger for the period 2000-01, 2001-02 and 2004- 05 and also the Profit and Loss Account for the period 2001-03 and 2003-04. He reported that the respondent failed to take into account certain items of wage payments for the purpose of contribution under the Act and that a total sum of Rs. 1,71,742/- is payable as contribution in this regard. Based on the said report, the respondent was issued with Ext.P3 notice dated 9.10.2006. On receipt of the said notice, the respondent submitted Ext.P4 reply dated 25.10.2006 raising various objections. The respondent was afforded an opportunity of personal hearing on 7.12.2006 and thereafter on 9.1.2007. After considering the objections raised by the respondent, the appellant passed Ext.P5 order dated 11.5.2007, under Section 45A of the Act, assessing and demanding Rs. 1,71,482/- towards contribution on omitted wages relating to the period from 1.7.2000 to 30.6.2006.

6. Aggrieved by the assessment and demand made in Ext.P5 order, the respondent filed I.C. No. 39/2007 before the court below. As far as payment of contribution in respect of uniform allowance, utility allowance, travelling allowance, etc., is concerned, the respondent contended that the payments made to the employees under the above heads do not constitute "wages" as defined under sub-section (22) of Section 2 of the Act.

7. Before the court below, the proprietor of the respondent establishment was examined as PW1 and Exts.P1 to P5 were marked on their side. On the side of the appellant Corporation, Exts.D1 to D4 were marked.

8. After considering the pleadings and materials on record, the court below came to the conclusion that the assessment and demand made in Ext.P5 order towards contribution on wages paid to casual labourers and on the amount booked under the head office cleaning charges are legal and correct. However, the court below set aside the demand of contribution under other heads, namely, difference in salary as per ledger and challan, uniform allowance, utility allowance, travelling allowance and other allowances.

9. Aggrieved by the said judgment dated 20.11.2009, the appellant is before this

Court in this appeal, raising the following substantial question of law; Whether the demand of contribution on payment of wages for uniform allowance, utility allowance and travelling allowance, which comes under the definition of "wages" under sub-section (22) of Section 2 of the Act, is sustainable as "wages" means all remuneration paid or payable in cash to an employee?

10. Sub-section (22) of Section 2 of the Act, which defines the term "wages" reads thus;

"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

xxx xxx xxx

(22) "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike, which is not illegal or lay-off and other remuneration, if any, paid at intervals not exceeding two months, but does not include-

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge."

11. In *Harihar Polyfibers v. Regional Director, ESI Corporation* (1984 (4) SCC 324) the Apex Court held that, the Employees' State Insurance Act is a welfare legislation and the definition of "wages" is designedly wide. Any ambiguous expression is, of course, bound to receive a beneficent construction at the hands of the Court. The Apex Court held further that, under the definition, first, whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, express or implied is wages; thus if remuneration is paid in terms of the original contract of employment or in terms of a settlement arrived at between the employer and the employees which by necessary implication becomes part of the contract of employment it is wages; second, whatever payment is made to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off is wages; and third, other additional remuneration, if any, paid at intervals not exceeding two months is also wages; this is unqualified by any requirement that it should be pursuant to any term of the contract of employment, express or implied. However, "wages" does not include any contribution paid by the employer to any pension fund or provident fund, or under the Act, any travelling allowance or the value of any travelling concession, any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment and any gratuity

payable on discharge. Therefore, wages as defined includes remuneration paid or payable under the terms of the contract of employment, express or implied but further extends to other additional remuneration, if any, paid at intervals not exceeding two months, though outside the terms of employment. Thus remuneration paid under the terms of the contract of employment (express or implied) or otherwise if paid at intervals not exceeding two months is wages. The interposition of the clause "and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off" between the first clause, "all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, was fulfilled" and the third clause, "other additional remuneration, if any, paid at intervals not exceeding two months", makes it abundantly clear that while "remuneration" under the first clause has to be under a contract of employment, express, or implied, "remuneration" under the third clause need not be under the contract of employment but may be any "additional remuneration" outside the contract of employment. In that view of the matter, the Apex Court held that, there is no reason to exclude "House Rent Allowance", "Night Shift Allowance", "Incentive Allowance" and "Heat, Gas and Dust Allowance" from the definition of "wages".

12. In *Harihar Polyfibers*" case (supra) the Apex Court agreed with the views expressed by the Full Bench of the Andhra Pradesh High Court in *ESI Corporation, Hyderabad v. A.P. Paper Mills Ltd.* (AIR 1978 AP 18) and the Full Bench of the Karnataka High Court in *NGEF Ltd. v. Deputy Regional Director, ESI Corporation, Bangalore* (1980 Lab IC 431).

13. In *A.P. Paper Mills*" case (supra), the Full Bench of the Andhra Pradesh High Court held that, the word "other" appearing at the commencement of the third part of the definition of wages under sub-section (22) of Section 2 of the Act indicates that it must be remuneration or additional remuneration other than the remuneration which is referred to in the earlier part of the definition viz., all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and "incentive bonus" in the scheme in question is certainly an additional remuneration. In the said decision, the Full Bench has also emphasised that, under the third part of the definition of "wages" it is actual factum of payment which counts because the word used is "paid" as distinguished from "paid or payable". The moment an employee gets any additional remuneration other than the remuneration payable under the contract of employment and if this additional remuneration is paid at intervals not exceeding two months, it becomes wages by virtue of the third part of the definition of "wages".

14. In *NGEF*'s case (supra), the Full Bench of the Karnataka High Court held that, the word "remuneration" is found both in the first and second parts of the definition. But the condition attached to such payment in the first part cannot legitimately be extended to the second part. The other "additional remuneration"

referred to in the second part of the definition is only qualified by the condition attached thereto (that is, paid at intervals not exceeding two months). That was also the view taken by a Full Bench of the Andhra Pradesh High Court in *ESI Corporation, Hyderabad v. A.P. Paper Mills Ltd.* (AIR 1978 AP 18) and also the Bombay High Court in *Mahalaxmi Glass Works Pvt. Ltd. v. ESI Corporation* (1976 Lab IC 514).

15. In *Wellman (India) Pvt. Ltd. v. ESI Corporation* (1994 (1) SCC 219) the question that came up for consideration before the Apex Court was as to whether "attendance bonus" payable under the terms of the contract, namely, the "Quarterly Attendance Bonus Scheme" was "wages" within the meaning of sub-section (22) of Section 2 of the Act. The Apex Court held that, the "attendance bonus" payable to the employees is under the terms of the settlement which has become a part of the contract of employment. Hence the said bonus will fall within the first part of the definition of "wages" under sub-section (22) of Section 2 of the Act, which covers all remuneration paid or payable in cash to an employee if the terms of contract of employment, express or implied, were fulfilled. The Apex Court held further that, the expression "other additional remuneration, if any, paid" implies that the said remuneration is not payable under any contract of employment, express or implied. This is so because while the first part of the definition refers to remuneration under the contract of employment, the second part does not refer to remuneration under any such contract. Secondly, the definition is inclusive and includes only such payments outside the contract as are mentioned in its second part and none other. Thirdly, the expression "if any, paid" after the words "other additional remuneration" will be inconsistent if the remuneration is payable under the contract of employment since such payment is not dependent on the will of the employer but on the fulfilment of the terms of the contract. Lastly, the second part of the definition includes only such contractual payments as are specifically mentioned therein and the exclusionary part does not include the "attendance bonus" like the present which is payable as stated above under a contract. Hence the expression "other additional remuneration, if any, paid" not only does not refer to remuneration payable under any contract but refers to such remuneration which is payable at the will of the employer. Every remuneration that is payable under the contract would, therefore, fall under the first part of the definition.

16. In *Modella Woollens Ltd. v. ESI Corporation* (1994 Supp.(3) SCC 580) the question that came up for consideration of the Apex Court was as to whether "production bonus" paid to the employees is "wages" within the meaning of sub-section (22) of Section 2 of the Act. Under the agreement the bonus in question is to be paid at the end of each quarter. There is also a provision in the agreement that the employees can claim advance against such bonus and the finding recorded by the Insurance Court shows that every employee has received such advance. The Apex Court held that, the mere term in the agreement that the payment of bonus would be made at the end of the quarter, therefore, does not make the bonus, a payment other than remuneration for the labour put in

during the said quarter. Hence the stipulation in the agreement that the payment of bonus would be made at the end of the quarter is not material for deciding the question whether the payments would be covered by the first part of the definition or not. What the court has to look into is the nature of the payment. The term "production bonus" itself shows that it is a payment connected with or relatable to the production over a period. Hence it cannot be a payment other than "wages" within the meaning of the said definition.

17. In *Handloom House, Ernakulam v. Regional Director, ESI Corporation* (1999 (4) SCC 7) the Apex Court, after referring to its earlier decision in *Harihar Polyfibers*" case (supra), held that, the main body of the definition "wages" encompasses within its fold three kinds of payments made to the employees. First is, all remuneration paid or payable in cash on fulfilment of the terms of employment. The second is any payment made to an employee in respect of any period of authorised leave, etc. The third is other additional remuneration paid at intervals "not exceeding two months". The moment an employee gets any additional remuneration other than the remuneration payable under the contract of employment and if this additional remuneration is paid at intervals not exceeding two months, it becomes "wages" by virtue of the third part of the definition of "wages".

18. In *Whirlpool of India Ltd. v. ESI Corporation* (2000 (3) SCC 185) the Apex Court held that, the ESI Act is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. Undoubtedly, any provision of which two interpretations may be possible would deserve such construction as would be beneficial to the working class but, at the same time, the court cannot give a go-by to the plain language of a provision. The Apex Court held further that, under the first part of sub-section (22) of Section 2 of the Act, all the remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled would be "wages". Under this part neither the actual payment nor when the payment is made is of any relevance. The last part of sub-section (22) of Section 2 relates to payment of additional remuneration. Additional remuneration, if any, paid at intervals not exceeding two months and not falling in clauses (a) to (d) would also be wages within the meaning of the term as defined. Under this part of the definition, there has to be payment and not only payability and the payment has to be at intervals not exceeding two months. Additional remuneration to become "wages" has to be "paid" at intervals not exceeding two months as distinguished from "being payable". Thus, under the last part, there has to be actual payment.

19. The legal principles culled out from the decisions of the Apex Court referred to supra are as follows;

(i) "Wages" as defined in sub-section (22) of Section 2 of the ESI Act means all remunerations paid or payable in cash to an employee under the terms of the contract of employment, express or implied.

(ii) "Wages" includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off.

(iii) "Wages" also includes other additional remuneration, if any, paid at intervals not exceeding two months.

(iv) However, "wages" does not include any contribution paid by the employer to any pension fund or provident fund, or under the ESI Act; any travelling allowance or the value of any travelling concession; any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or any gratuity payable on discharge, as provided under clauses (a) to (d) of sub-section (22) of Section 2 of the ESI Act.

(v) While "remuneration" under the first part has to be under a contract of employment, express, or implied, "remuneration" under the third part need not be under the contract of employment, but may be any "additional remuneration" outside the contract of employment.

(vi) The Court has to look into the nature of payment in order to find out whether such payment would fall under the first part of the definition.

(vii) Additional remuneration, if any, paid at intervals not exceeding two months and not falling under clauses (a) to (d) of sub-section (22) of Section 2 of the ESI Act (which are in the nature of exception to the main part of that sub-section) would also fall under the term "wages" as defined under that sub-section.

20. In the instant case, the pleadings and materials on record would show that, the respondent establishment is engaged in supply of security personnel on the requirements of their customers. The ledger figures indicate the sum total of all sort of payments made by the respondent to its employees, which include travelling allowance, uniform allowance, utility allowance and other allowances paid in cash to each employee in every month, at uniform rate. According to the respondent, these allowances are payments made to the employees in order to meet the travelling expenses and to defray other expenses in connection with their deployment as security personnel on the requirements of various customers.

21. The proprietor of the respondent establishment, who was examined as PW1, deposed that uniform allowance, utility allowance, travelling allowance and other allowances are payments made to the employees to meet their expenses, which they have to incur on account of their nature of work. Uniform allowance is a payment made to the employees to meet the expenses in connection with purchase of uniforms and its maintenance. Utility and other allowances are payment made to the employees to meet the expenses incurred in connection with purchase of raincoat, boot, umbrella, torch, helmet, etc. With a view to ensure punctuality, the employees are also paid travelling allowance.

22. The first question that arises for consideration in this appeal is as to whether travelling allowance paid to the employees falls under clause (b) of sub-section

(22) of Section 2 of the Act.

23. Clause (b) of sub-section (22) of Section 2 of the Act excludes travelling allowance or the value of any travelling concession from the definition of "wages".

24. In *Management of Oriental Hotels Ltd. v. ESI Corporation* (2002 (I) LLJ 14), a Division Bench of the Madras High Court held that, in view of the specific exclusion of travelling allowance in the definition of sub-section (22) of Section 2 of the Act itself and since conveyance allowance was of the same character as travelling allowance, conveyance allowance paid in cash for the purpose of being utilised on the travel from place of residence to the place of work would not constitute wages within the definition of sub-section (22) of Section 2. Para.8 of the judgment reads thus;

"8. In so far as the conveyance allowance is concerned, even though it forms part of the wages being the amount payable in terms of the contract of employment, having regard to the settlement and even de hors the settlement, the payment of the amount would fall within the ambit of "additional remuneration". Nevertheless, that amount will have to be excluded having regard to the specific exclusion provided in the definition itself for travelling allowance or the value of any travelling concession. The conveyance allowance paid is in the nature of travelling allowance as the object of that payment is to enable the employee to reach his place of work and to defray a part of the cost incurred on the travel from his place of residence to the place of work. If instead of paying the conveyance allowance, the employer had provided free transport to the employees, the monetary value of that benefit of free travel from his residence to the place of work would not have been capable of being regarded as forming part of the wages. The conveyance allowance paid in cash for the purpose of being utilised on the travel from place of residence to the place of work, is of the same character and there is no reason why it should not be regarded as travelling allowance for the purpose of clause (b) of subsection (22) of Section 2 of the Employees' State Insurance Act."

25. In *Regional Director, ESI Corporation v. Sundaram Clayton Ltd.* (2004 (II) LLJ 30) another Division Bench of the Madras High Court reiterated that, payment towards conveyance allowance for the purpose of being utilised by the employees on their travel from the place of residence to the place of work has to be construed as travelling allowance and thereby it cannot be construed as "wages", as travelling allowance has been excluded from the purview of the said definition, which falls within the ambit of additional remuneration and it will come under the exclusion clause (b), as provided under sub-section (22) of Section 2 of the Act.

26. In *Rajashree Cement v. The Deputy Director, ESI Corporation* (2004 (III) LLJ 1039) the question that came up for consideration before a Division Bench of the Karnataka High Court was as to whether conveyance allowance paid by the Management to their employees in terms of the contracts of employment/settlement arrived at with the employees forms part of their "wages" within the

meaning of sub-section (22) of Section 2 of the Act. After referring to the decisions of the Apex Court in Wellman's case (supra) and Modella Woollens' case (supra) and the decision of the Karnataka High Court in Escorts Limited v. Regional Director, ESI Corporation (2004 (III) LLJ 200), the Division Bench held that, the payment of conveyance allowance made by the Management under a settlement with the employees would constitute payments made under the contract of employment, which form part of their "wages" under subsection (22) of Section 2 of the Act, especially when such payments are made to all the employees, regardless whether they are using any conveyance and the type of conveyance which they are using. The Division Bench held further that, travelling allowance referred to in clause (b) is a payment meant to defray specific expenses incurred by the employees by reason of the nature of his employment and may include any allowance paid or reimbursed to any employee for specific duty related journey. It may also include reimbursement of actual cost of journey subject to proof of actual expenditure. Payment of conveyance allowance on a uniform basis regardless whether the employee concerned has or has not incurred any expenditure on his journey to a place of his work is not however synonymous to travelling allowance as is envisaged under Clause (b) of sub-section (22) of Section 2 of the Act. The ESI Courts were, in that view of the matter, perfectly justified in holding that the payment of conveyance allowance to the employees was a part of the wage payable to them and would therefore be relevant for the purposes of determining the liability of the Management to pay contribution.

27. In *Regional Director, ESI Corporation, Thrissur v. Royal Plastics Industries, Aluva* (2015 (2) KLT 64) a Learned Judge of this Court, after referring to the judgments of the Madras High Court in *Oriental Hotels'* case (supra) and *Ganesan's* case (supra) held that, clauses (a) to (d) of subsection (22) of section 2 of the Act are in the nature of exception to the main part of the sub-section. Any travelling allowance or the value of any travelling concession would be outside the purview of the term "wages". Whether the travelling allowance is paid as part of the contract of employment, or whether it is paid in lump sum or whether it is paid at regular intervals, it would not cease to be, but it would constitute, travelling allowance. It would not cease to be travelling allowance only because it is a fixed sum paid along with the wages, as per the terms of the contract of employment. In that view of the matter, the Learned Judge repelled the contention of the Corporation that, if the travelling allowance is paid in lump along with the salary as per the terms of the contract of employment, it would cease to be travelling allowance within the meaning of clause (b) of subsection (22) of Section 2 of the Act.

28. In the instant case question that arises for consideration is as to whether travelling allowance paid to the employees falls under clause (b) of sub-section (22) of Section 2 of the Act. Clause (b) of sub-section (22) of Section 2 of the Act excludes travelling allowance or the value of any travelling concession from the definition of "wages". It is a settled principle of statutory interpretation that,

the literal meaning of the statute has to be considered by the Court. A statutory provision can be read down or construed in a different manner only if there is any ambiguity in the statute or in its plain and literal meaning. When the statute, without any ambiguity and without any express limitations or restrictions, excludes travelling allowance or the value of any travelling concession from the definition of "wages", any attempt to construe it in a different manner is legally impermissible. The object of payment of travelling allowance is to enable the employees to reach their place of work and to defray, either in part or full, the cost incurred on their travel from place of residence to place of work. It is a payment meant to defray the travelling expenses incurred by the employees by reason of the nature of their employment. As held by this Court in *Royal Plastics Industries*" case (supra), whether the travelling allowance is paid as part of the contract of employment, or whether it is paid in lump sum or whether it is paid at regular intervals, it would not cease to be, but it would constitute, travelling allowance. It would not cease to be travelling allowance only because it is a fixed sum paid along with the wages, as per the terms of the contract of employment.

29. Therefore, the question is as to whether travelling allowance paid by the respondent to each employee, at uniform rate in every month, are payments made to defray the travelling expenses incurred by them by reason of the nature of their employment. The proprietor of the establishment, who was examined as PW1, deposed that travelling allowance is a payment made to the employees to defray the expenses, which they have to incur on account of their nature of work. However, the statutory registers and other records maintained by the establishment were not produced before the court below to prove that such payments are made to defray the travelling expenses entailed on the employees by the nature of their employment. The court below, merely relying on the oral evidence of PW1 and after referring to sub-section (22) of Section 2 of the Act, arrived at a conclusion that travelling allowance is excluded from the purview of "wages" as per clause (b) of sub-section (22) of Section 2 of the Act, and as such no contribution is payable. Since the conclusion as aforesaid made by the court below is merely relying on the oral evidence of PW1, the same cannot be sustained in law.

30. The next question that arises for consideration in this appeal is as to whether uniform allowance, utility allowance and other allowances paid to the employees fall under clause (c) of sub-section (22) of Section 2 of the Act.

31. Clause (c) of sub-section (22) of Section 2 of the Act excludes any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment from the definition of "wages".

32. The scope and ambit of clause (c) of sub-section (22) of Section 2 of the Act arose for consideration before a Division Bench of the Karnataka High Court in *Graphite India Ltd. v. ESI Corporation* (1992 (II) LLJ 125). The question before that Court was as to whether "washing allowance" paid to the employees is part of wages or for defraying the expenses. After referring the definition "wages"

and the exclusion clause, particularly clause (c) of sub-section (22) of Section 2 of the Act, the Division Bench held that, any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment cannot be included in wages. The washing allowance paid under the settlement between employer and employees could be only for defraying the expenses of washing of dresses or clothes used by each of them when they attend the work. Accordingly, it was held that the monthly washing allowance paid by the principal employer squarely falls under clause (c) of sub-section (22) of Section 2 of the Act.

33. In the case of *Malabar Fruit Products Co. v. ESI Corporation* (1991 (2) KLT 484 : 1992 (II) LLJ 786) the question before a Division Bench of this Court was as to whether the "meals allowance" paid to employees is to defray the special expenses and falls under clause (c) of sub-section (22) of Section 2 of the Act. The Division Bench, after referring to the judgment of the Apex Court in *Harihar Polyfibers*" case (supra) held that, the "meals allowance" paid to the employees is one that falls under clause (c) of sub-section (22) of Section 2 of the Act. This payment being in the nature of special expenses cannot be treated as "wages" within the meaning of the Act. Paras. 7 and 8 of the judgment read thus;

"7. This allowance, it can be presumed, is paid to meet the need to refresh the human body by solid food during working hours. It is to accomplish this object, in our view, law insist that the workmen shall be given intervals during working hours to take food. The circumstances under which this allowance is paid make it clear that the employer wanted to get himself exonerated from the responsibility of the employees being provided with the canteen facilities immediately. The question accordingly is: can this allowance be treated as wages. It should in this connection be remembered that the demand by the authority concerned is to pay the employees" contribution within the meaning of the Act. A reference in this connection to sub-section (2) of Section 40 of the Act is profitable. This section entails the employer to recover from the employee the employees" contribution by deduction from his wages. The employer, going by the relevant provisions of the Act has to pay to the Corporation the contribution in respect of the employee from whose "wages" he would deduct the contribution. To put it differently the contribution, an employee shall pay, is being collected through the agency of the employer. The direction to deduct a portion of the "meals allowance" representing part of employees" contribution would mean that some fraction of the meals, the employee could have by spending the money that he would get under the head "meals allowance" would have to be deducted by the employer as employees" contribution. This approach to the issue if recognised, would bring about ludicrous situation. This shall not happen and in our view to avoid such a situation as stated by the learned Judges of the Punjab and Haryana High Court in *ESI Corporation, Chandigarh v. M/s. Gedore Tolls India (P) Ltd.* (1987 Lab IC 570) a liberal interpretation of exclusion clause must necessarily be given as they are beneficial to the interest of the employees for whose benefit the Act had been enacted. We therefore, with respect, are in complete agreement with the following observation of the learned Judges: "This being a welfare legislation, it

also appears to us that the main part of the definition of "wages" has designedly been kept wide and all embracing when it comes to inlets. In the same spirit of welfare of the employee, the latter part also provides liberal exclusions or outlets when the employee need be reimbursed on his entailing special expenses by the nature of his employment".

8. Going by this principle we are of the view that the "meals allowance" paid to the employees is one that falls under clause (c) of Section 2(22). This payment being in the nature of special expenses cannot be treated as wages within the meaning of the Act."

34. In *S. Ganesan v. The Regional Director, ESI Corporation* (2004 (II) LLJ 650), the question that came up for consideration before the Division Bench of the Madras High Court was as to whether, "travelling batta" being paid to the employees for tiffin, meals etc., and that being paid to the running staff like drivers and conductors to defray special expenses towards meals and other expenses depending on the nature and time of their employment, form part of "wages" under sub-section (22) of Section 2 of the Act or it is a defray special expenses exempted under clause (c) of sub-section (22) of Section 2 of the Act. The Division Bench held that, "travelling batta" paid to the employees is covered by the exclusion clause (c) of sub-section (22) of Section 2 of the Act and it is outside the scope of "wages".

35. In view of the law laid down in the decisions referred to supra, any sum paid by the respondent establishment to its employees to defray special expenses entailed on them by the nature of their employment as security guards, falls under clause (c) of sub-section (22) of Section 2 of the Act, which will not form part of their "wages".

36. Therefore, the question is as to whether uniform allowance, utility allowance and other allowances paid by the respondent, at uniform rate in every month, are payments made to the employees to defray special expenses entailed on them by the nature of their employment. The proprietor of the establishment, who was examined as PW1, deposed that uniform allowance, utility allowance and other allowances are payments made to the employees to defray expenses, which they have to incur on account of their nature of work. However, the statutory registers and other records maintained by the establishment were not produced before the court below to prove that such allowances are paid to defray such special expenses. The court below, merely relying on the oral evidence of PW1 arrived at a conclusion that, uniform allowance, utility allowance and other allowances are payments made to defray special expenses incurred by the security guards, in view of the peculiar nature of their employment, and such payments are excluded from the purview of "wages" as per clause (c) of sub-section (22) of Section 2 of the Act. Since the conclusion as aforesaid made by the court below is merely relying on the oral evidence of PW1, the same cannot be sustained in law.

37. In the result, the finding of the court below that, the payments made by the appellants towards travelling allowance, uniform allowance, utility allowance and other allowances are excluded from the purview of "wages" as per clauses (b) and (c) of sub-section (22) of Section 2 of the Act and as such no contribution is payable, is set aside and the matter is remanded to the court below for fresh consideration. The court below shall give an opportunity to the respondent establishment to produce statutory registers and other records, in support of its claim for exclusion. It would be open to both sides to adduce further evidence, both oral as well as documentary. Both parties shall appear before the court below on 01.06.2016.

The court below shall finally dispose of the application, as expeditiously as possible, at any rate within a period of four months from the date of production of a certified copy of this judgment.